

BEFORE THE FEDERAL ELECTION COMMISSION

Jan Schneider and
Schneider for Congress
(ID - 374751)

Complainant

v

Michael J. Shelton

Respondent

MUR No. 5361

2003 JUN 11 P 12:54

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

**SUPPLEMENTAL RESPONSE OF MICHAEL J. SHELTON TO
COMPLAINT FILED BY JAN SCHNEIDER AND THE
SCHNEIDER FOR CONGRESS CAMPAIGN COMMITTEE**

Respondent, Michael J. Shelton, hereby supplements his Response to the Complaint of Jan Schneider and the campaign committee of Schneider for Congress by stating as follows:

1. On June 10, 2003, the Respondent filed his response to a Complaint initiated by Jan Schneider and the Schneider for Congress campaign committee (hereinafter, the "Response").
2. After reading Miss Schneider's Complaint, the Respondent realized that there may be confusion about his willingness to supply copies of paper documents to Miss Schneider. As a result, on May 26, 2003, the Respondent sent a letter to Miss Schneider offering to assist her with any additional paper documents to which he may have access.¹
3. In his Response, the Respondent attached a copy of the May 26, 2003 letter and explained it was never his intent to withhold documentation concerning campaign expenditures and his willingness to work with Miss Schneider to provide any specifically requested materials. The

¹ See Letter from Michael J. Shelton to Jan Schneider, dated May 26, 2003, attached hereto and made a part hereof as Exhibit "A".

Respondent stated in his Response “[f]urthermore, upon recently learning of Miss Schneider’s need for information beyond that which is stored on the Respondent’s computer, he immediately wrote to Miss Schneider offering his assistance. To date, he has received no request for documentation or other assistance . . . ”²

4. Furthermore, the Respondent stated “[s]hould Miss Schneider need additional documentation on reimbursements made to the Respondent, *she only need ask, in writing, with specificity. (emphasis added)*. The Respondent will assist in providing any specific requested documentation available to him.”³

5. As of the filing of the Response on June 10, 2003, the Respondent had not received a reply to his letter of May 26th; however, after submitting his Response, a letter from Robert A. Burka, Esq., counsel for Miss Schneider, was delivered to the Respondent’s home.⁴

6. A review of Mr. Burka’s letter makes it clear that neither he nor his client is interested in amicably resolving the issues before the Commission. The Respondent’s letter made it very clear that all Miss Schneider has to do is ask, with specificity, and the Respondent will use his best efforts to supply the missing documentation, documentation which should have been collected and maintained by Miss Schneider’s campaign treasurer.⁵

7. Miss Schneider continues to make bald allegations against the Respondent by making such statements as “ . . . you authorized reimbursements to yourself and failed to provide the

² Response of Michael J. Shelton, filed June 10, 2003, ¶ 40.

³ Response of Michael J. Shelton, filed June 10, 2003, ¶ 41.

⁴ See Letter from Robert A. Burka, Esq. to Michael J. Shelton, dated June 5, 2003, a copy of which is attached hereto and made a part hereof as Exhibit “B”.

⁵ See generally 2 U.S.C. § 432, 11 C.F.R. § 102.9.

24-04-03-4479
Treasurer with requisite backup materials.”⁶ At no time did Mr. Johnson ever issue a campaign account check without receiving all documentation which he requested.⁷ The Respondent cannot be held accountable if the campaign treasurer failed to maintain adequate records or is unable to locate all receipts previously provided. It is not reasonable to expect the Respondent to re-create all documentation previously supplied. The Respondent has offered to work to assist Miss Schneider and the campaign treasurer fulfill their statutory obligations; however, they will need to state, in writing, exactly what it is they claim to be missing.⁸

8. The tone of Mr. Burka’s letter is also indicative of the hostility he and his client possess and their lack of desire to resolve the issues presented to the Commission. It is interesting to note that on June 6, 2003, an offer to settle all issues between the Respondent and Miss Schneider was presented to and received by Mr. Burka.⁹ The offer was rejected by Miss Schneider.

⁶ Exhibit B, ¶ 4, First Sentence.

⁷ *See generally* Affidavit of Misty Smeltzer, dated June 10, 2003, attached hereto and made a part hereof as Exhibit “C”.

⁸ It is very interesting that Miss Schneider offers no evidence, such as testimony from the campaign treasurer, that the Respondent failed or refused to provide him with all documentation which he requested.

⁹ *See* E-mail from Dennis Plews, Esq to Robert A. Burka, Esq, dated June 6, 2003, attached hereto and made a part hereof as Exhibit “D”. The letter was also sent to Susan Chapman, Esq., Miss Schneider’s local Florida counsel.

Therefore, the Respondent respectfully requests that Miss Schneider's Complaint be dismissed
by the Federal Election Commission.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE
CONTENTS OF THE FOREGOING SUPPLEMENTAL RESPONSE ARE TRUE TO
THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

A handwritten signature in black ink, appearing to read 'M. J. Shelton', written over a horizontal line.

Michael J. Shelton

June 10, 2003

24.04.408.4480

Michael J. Shelton, Esq.
426 Partridge Circle
Sarasota, Florida 34236

EXHIBIT A

941-928-0567

941-953-2694 (fax)

May 26, 2003

Jan Schneider
487 Meadowlark Drive
Sarasota, Florida 34236

Dear Jan:

I am in receipt of your complaint filed with the Federal Election Commission and wish to clarify one misunderstanding. It was never my intention to deny assistance with supplemental information concerning expenditures by the campaign and more specifically, reimbursements to me. I have always been under the impression that you only wanted copies of campaign reports prepared by me and stored on my personal computer.

My copies of all reimbursements to everyone in the campaign, as well as copies of campaign reports prepared and filed by me, were kept in two separate folders in the file cabinet at the office. I do not recall which drawer they were in, but they were both in the same drawer and I believe it was the top drawer. Both files were left in the cabinet when I left on November 1, 2003.

Should you need any additional information from me concerning reimbursements, please provide your detailed written request specifying exactly the documentation you need. I will be happy to see what I can locate. You may also feel free to make these request directly to me without the need to involve my attorney.

Very truly yours,

Michael J. Shelton

COPY

June 5, 2003

WRITER'S DIRECT LINE
202.672.5345
rburka@foleylaw.com EMAIL

CLIENT/MATTER NUMBER
026210-0101

Michael J. Shelton, Esquire
426 Partridge Circle
Sarasota, FL 34236

EXHIBIT B

Re: Federal Election Commission Complaint MUR #5361

Dear Mr. Shelton:

This is in response to your letter addressed to Jan Schneider, dated May 26, 2003 (Exhibit A hereto).

1. Counsel for Schneider Campaign. As you know, my firm and I represent Ms. Schneider and Schneider for Congress in all pending matters before the Federal Election Commission, including but not limited to MUR # 5350, MUR # 5354 and MUR # 5361. We have also entered appearances on behalf of other individuals -- that is, contributors to the Schneider for Congress campaign -- that you named in MUR #5350. Consequently, please address all communications concerning or relating to these FEC matters to me, rather than contacting any of my clients directly. This includes any communications to Carroll F. Johnson, as Treasurer of Schneider for Congress, and/or Harold B. Schneider, as Assistant Treasurer and later Treasurer of the committee.

With respect to other Schneider campaign matters, Ms. Schneider, Schneider for Congress, and all officers and agents of the committee are represented by Susan Chapman, Esq., of Sarasota, Florida. Since you have previously dealt with Ms. Chapman, you know how to contact her.

2. Lack of Designation of Shelton Counsel. This letter is addressed to you, since you have, to the best of my knowledge, failed to file any designation of counsel with respect to MUR # 5361, the subject of your May 26 letter. Further, while you have previously claimed to be represented by Dennis J. Plews, Esq., in connection with MUR #5350, we have seen no designation of counsel or other written advice to that effect. Moreover, Mr. Plews has declined to confirm his representation of you in any Federal Election Commission matter, notwithstanding my repeated requests. (See email exchanges with Mr. Plews, Apr. 10, 2003 & Apr. 21, 2003, Exs. B & C.) In order to avoid any further confusion, we hereby again request immediate written confirmation of the role, if any, of Mr. Plews has in the FEC proceedings in which you are involved. I am also enclosing a copy of this letter for you to give counsel, if any, that may be representing you in matters before the Federal Election Commission

3. Schneider Financial Data. With respect to the substance of your May 26 letter, your continuing refusal to turn over Schneider for Congress electronic data and other information is preventing both (a) the respondents from fully addressing and (b) the Federal Election Commission from completely and fairly investigating complaints you have instigated before the FEC. Your

BRUSSELS
CHICAGO
DENVER

DETROIT
JACKSONVILLE
LOS ANGELES
MADISON

MILWAUKEE
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
TALLAHASSEE

TAMPA
WASHINGTON, D.C.
WEST PALM BEACH

1025357.v1

refusal to turn over to the committee its own records is also precluding Schneider for Congress from properly correcting and completing all accounting for the 2002 Schneider campaign, including complying in full with FEC electronic reporting requirements.

You have repeatedly pretended that you lacked knowledge regarding what materials Ms. Schneider was seeking, that you were "reluctant to speculate . . .," and even that your "crystal ball is on the fritz at the moment . . ." (email of Apr. 22, 2003, Ex. C). At the same time, after preparing Schneider for Congress electronic filings with the FEC as a volunteer, you several times sought to sell these records back to the committee for \$6,000.00 -- claimed to be "for the time it took [you] to complete them, some 24 hours at [your] customary billable rate of \$250 per hour" (Plews letter, Feb. 20, 2003, Ex. D; see also Exs. B & C supra). Now, while admitting knowing full well that Schneider for Congress most urgently needs "copies of campaign reports prepared by me and stored on my personal computer," you profess ignorance as to other, related requirements and requests (May 26 letter, Ex. A supra).

In the circumstances, let me be absolutely clear, once again. *Schneider for Congress and Ms. Schneider hereby again demand that you turn over any and all Schneider campaign records, in whatever form, in your possession, custody or control. These include, but are not limited to, any and all financial data, FEC electronic filings or other materials stored on your computer or anywhere else.* Schneider for Congress will reimburse any reasonable copying costs involved.

4. Shelton Reimbursements. Your May 26 letter also raises the issue of reimbursements to you. Schneider for Congress is in possession of receipts for all expenditures by the committee, including reimbursements for amounts paid by various individuals, except for some instances in which you authorized reimbursements to yourself and failed to provide the Treasurer with requisite backup materials.

We do not know why you apparently treated payments to yourself differently from those to every other individual associated with the Schneider campaign, or why you failed to include the requisite "original vendor" memoranda for reimbursements in FEC filings you prepared for Schneider for Congress. From the original documentation maintained by the Treasurer, the committee has been able to supply the missing memos for all reimbursements to everyone else and some reimbursements to you. Only you, however, can rectify the problem with respect to your own, remaining expenditures. We cannot locate any folders resembling those your May 26 letter purports to describe. The Schneider campaign filing cabinet and some files are still located at our old headquarters, and you are welcome to look for yourself, at a mutually convenient time, when Susan Chapman or someone designated by her can be present. Please contact her to make the arrangements.

In sum, you have made formal complaints to the FEC, the resolution of portions of which requires access to data that you refuse to supply. Schneider for Congress also needs this information for other reasons, including to correct and complete required FEC electronic filings. In the circumstances, your actions seem to violate both the letter and the spirit of the Federal Election Campaign Act of 1971, as amended, as well as established fiduciary duties.

Sincerely,


Robert A. Burka

cc: Jeff S. Jordan, Esquire
Mr. Joseph F. Stoltz
Mr. Jeff Spilzewski
Mr. Christopher Whyrick
Susan Chapman, Esquire

BRUSSELS
CHICAGO
DENVER

DETROIT
JACKSONVILLE
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SAN DIEGO
SAN DIEGO/DEL MAR
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BEFORE THE FEDERAL ELECTION COMMISSION

Jan Schneider and
Schneider for Congress
(ID - 374751)

Complainant

v

Michael J. Shelton

Respondent

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MUR # 5361

AFFIDAVIT OF MISTY SMELTZER

I, Misty Smeltzer, being at least 18 years of age and fully competent to testify to the matters contained herein states as follows:

1. I was hired by Jan Schneider to work on her congressional campaign from June 10, 2002 through November 1, 2002 as her communications director/campaign office manager/lead organizer/scheduling coordinator/field director.

2. At all times during the aforesaid dates, I was intimately involved in all aspects of Jan's campaign. I was present in the campaign headquarters nearly every day. My duties involved just about every aspect of the campaign and certainly all areas dealing with the day to day functions of running a political campaign. I worked closely with Michael Shelton, on a daily basis, and discussed all aspects of the campaign with him during that time.

3. At all times during the campaign, Michael was authorized by Jan to spend campaign funds as he felt appropriate. By all appearances, this authority was absolute and without limitation.

At all times, the campaign treasurer was fully aware of all expenditures which were being made as he was the only one who could sign checks (except for Jan's father who rarely did so). Michael would meet with Mr. Johnson every couple of days in our private offices to discuss expenditures and review requests for checks to be issued by Mr. Johnson. Michael was always meticulous, almost to the point of being obsessive, about having receipts for every expenditure to give to the campaign treasurer. Mr. Johnson was equally obsessive about his records. ***The campaign treasurer would not issue a check for anything without first having received a receipt evidencing the amount to be paid.*** Mr. Johnson always collected these items and took them with him upon leaving the campaign headquarters. On almost a daily basis, I observed Michael making photocopies of donations received the previous day as well as receipts for expenditures and then delivering them to Mr. Johnson. These records were delivered by either placing the records into Mr. Johnson's "in box" in the campaign headquarters or personally handing them to him whenever he was in the office. It is unbelievable to me that the campaign treasurer, Mr. Johnson, would never have reimbursed Michael for any expenditures he made without first receiving a receipt from Michael evidencing the advance.

4. A file was also kept in the lateral file cabinet, next to my desk, in which extra copies of receipts and similar documents were kept. To the best of my knowledge, this file was in the cabinet when I left the campaign headquarters after quitting on the evening of November 1, 2003.

I solemnly affirm under the penalties of perjury that the contents of the foregoing affidavit are true to the best of my knowledge, information and belief.


Misty Smeltzer

June 10, 2003

Subj: **bcc: RE: Settlement Proposal**
Date: 6/6/2003 2:06:34 PM Eastern Daylight Time
From: dennis
To: RBurka
Sent from the Internet (Details)

EXHIBIT D

June 6, 2003

Robert A. Burka, Esq. VIA FAX # 202.672.5399
Foley & Lardner
3000 K Street, NW, Suite 500
Washington, DC 20007-5109

RE: Shelton v Schneider

Dear Mr. Burka:

I have just finished reviewing my client's draft response to the FEC complaint filed by your client. It is 38 pages, without attachments or affidavits, and I must tell you that it is not a pretty recitation of the events of the past year. Clearly, the actions of our respective clients are doing nothing to further their individual well being and resulting only in their mutual consternation. I believe that the filing of my client's response will have a significantly adverse impact upon all concerned, especially to Ms. Schneider who still harbors political ambitions. I would be happy to supply you with a pre-filing copy; however, I do not see any benefit that will come from showing it to Ms. Schneider. It will only upset her and, if released, others in the community. If you would like a courtesy copy prior to filing, please let me know.

Both of our clients have obligations to others which are much greater than their personal desires. If these battles continue, they will further damage the local Democratic party, which I am sure we all would rather avoid. In that regard, I believe that I have convinced my client to accept the following as a full and complete settlement to this uncomfortable situation:

1. Ms. Schneider pays the sum of \$3,500.00 to my client who will contribute it to Emily's List, a political action committee which supports pro-choice Democratic woman candidates as well as the Victory Fund, another liberal Democratic PAC (on February 20, 2003, your client offered this sum as a partial settlement);
2. My client provides Ms. Schneider with copies of all records contained on his computer or elsewhere and provides whatever assistance may be within his control to assist Ms. Schneider with fulfilling her campaign reporting requirements;
3. Our clients sign a general mutual release of all claims against each other;
4. Our clients sign a mutual confidentiality agreement which encompasses any and all matters which occurred from June 1, 2002 and through the date of any agreement;

Monday, June 09, 2003 America Online: MichaelJShelton

5. Our clients, to the extent possible, withdraw any complaints which they may have filed against the other with any agency, to include, but not be limited to, the Federal Elections Commission;

6. Our clients agree not to file any future complaints against each other; and

7. Now that Ms. Schneider has decided to run for public office again, my client will not engage in any activities which could be construed as campaigning against her.

8. Mr. Shelton would agree not to pursue any legal remedies he may have against others related to the Schneider campaign nor the Sarasota Herald Tribune for publishing her slanderous comments on March 29, 2003, in conformity with the release mentioned in number 3 above.

I hope that you see the benefit that will come from your client accepting Mr. Shelton's offer. Not only will our clients' benefit, but the community as a whole will be able to begin the process of healing. Should the information in these filings become public, only the GOP will benefit

As my client is facing a deadline to file his response with the FEC by Tuesday next, I will need your response no later than Monday, June 9, 2003 at 5:00 PM. Thank you for your consideration of this proposal.

Sincerely,

Dennis J. Plews

cc: Michael J. Shelton, Esq.
Susan Chapman, Esq.

EXHIBIT C

24.04.403.443

Michael J. Shelton, Esq.
426 Partridge Circle
Sarasota, Florida 34236

May 26, 2003

Jan Schneider
487 Meadowlark Drive
Sarasota, Florida 34236

Dear Jan:

I am in receipt of your complaint filed with the Federal Election Commission and wish to clarify one misunderstanding. It was never my intention to deny assistance with supplemental information concerning expenditures by the campaign and more specifically, reimbursements to me. I have always been under the impression that you only wanted copies of campaign reports prepared by me and stored on my personal computer.

My copies of all reimbursements to everyone in the campaign, as well as copies of campaign reports prepared and filed by me, were kept in two separate folders in the file cabinet at the office. I do not recall which drawer they were in, but they were both in the same drawer and I believe it was the top drawer. Both files were left in the cabinet when I left on November 1, 2003.

Should you need any additional information from me concerning reimbursements, please provide your detailed written request specifying exactly the documentation you need. I will be happy to see what I can locate. You may also feel free to make these request directly to me without the need to involve my attorney.

Very truly yours,

Michael J. Shelton

Michael J. Shelton, Esq.
426 Partridge Circle
Sarasota, Florida 34236

May 26, 2003

Jan Schneider
487 Meadowlark Drive
Sarasota, Florida 34236

Dear Jan:

I am in receipt of your complaint filed with the Federal Election Commission and wish to clarify one misunderstanding. It was never my intention to deny assistance with supplemental information concerning expenditures by the campaign and more specifically, reimbursements to me. I have always been under the impression that you only wanted copies of campaign reports prepared by me and stored on my personal computer.

My copies of all reimbursements to everyone in the campaign, as well as copies of campaign reports prepared and filed by me, were kept in two separate folders in the file cabinet at the office. I do not recall which drawer they were in, but they were both in the same drawer and I believe it was the top drawer. Both files were left in the cabinet when I left on November 1, 2003.

Should you need any additional information from me concerning reimbursements, please provide your detailed written request specifying exactly the documentation you need. I will be happy to see what I can locate. You may also feel free to make these request directly to me without the need to involve my attorney.

Very truly yours,

Michael J. Shelton

Burka, Robert A.

From: Burka, Robert A.
Sent: Thursday, April 10, 2003 1:40 PM
To: 'dennis'
Cc: MichaelJShelton
Subject: RE: Your Recent Telephone Call to me.

This is not responsive to my enquiry, which relates to having access to data and records necessary for my clients to defend themselves against charges made by your client. As things now stand, Mr. Shelton has made claims that I understand to be baseless, but with respect to some portions we cannot fully demonstrate their lack of merit without access to records that Mr. Shelton is withholding.

In short, Mr. Shelton has made claims to the Federal Election Commission and is now withholding data to defeat my client's ability to defend herself.

I take your E-mail to be a continued refusal to provide those data and records, and I will act accordingly.

One further point. I represent Ms. Schneider and her committee only in the FEC matter. Mr. Shelton tells me that he filed his complaint with the Commission through counsel and that you represent him before the FEC. Could you please tell me if you are the attorney who filed Mr. Shelton's FEC complaint and, if not, then who did? Further, could you please confirm that you represent Mr. Shelton before the FEC? If so, then could you please tell me where on the papers that Mr. Shelton filed with the FEC you are identified? And if you do not represent Mr. Shelton before the FEC, then does anyone and, if so, who?

-----Original Mess

From: Dennis Plews
Sent: Thursday, April 10, 2003 1:29 PM
To: rburka@foleylaw.com
Cc: MichaelJShelton@aol.com
Subject: Your Recent Telephone Call to me.

April 10, 2003

Mr. Burka:

I am aware of the probable reason for your call to me. As I have been subjected to a similar demand from attorney Susan Chapman, my response to her will, I believe, be responsive to your presumed purpose. In salient part, it is as follows:

"Concerning the so-called FEC records, you make interesting assertions concerning ownership and have information concerning Mr. Carroll's position with the Schneider campaign that is inconsistent with what is known to be true. As to the ownership of the data that may still be contained in my client's personal computer, Mr. Carroll provided the data from paper records and presumably he or some other campaign member such as your client or her father should still be possessed thereof. Anything in my client's computer was entered by him and would therefore appear to be his work product. As your claim of ownership is unsupported by any citations of authority, I am unable to agree that the data is anything other than the product of my client's labors. Would you be so kind as to provide me with copies of the legal authorities upon which you base your ownership assertion so that I might review same and reach my own legal opinion on this issue in the light thereof? Alternatively, your client can purchase those records from my client by paying him for the time it took him to compile them, some 24 hours, at his customary billable rate of \$250.00 per hour"

If this is not responsive to your intended inquiry, I apologize for the presumption and invite your message by return e-mail. If my presumption is correct, then I look forward to your response and being enlightened thereby concerning the legal authorities that support Ms. Schneider's claim.

Sincerely,
Dennis J. Plews

From: Dennis Plews
Sent: Tuesday, April 22, 2003 12:40 PM
To: Burka, Robert A.
Subject: RE: Your Recent E-Mail

Mr. Burka:

Your failure to employ the usual common courtesies attendant upon written communications is revealing, as is your belief in the crystal clarity of your request. To date, you have not asked me for anything nor identified with any specificity that which you seek from my client. When I wrote to you initially, I set forth that which I thought you were seeking and you responded that I was incorrect in that regard and was "not responsive" to your request (See Below for full details). As you made no request to me, I cannot conceive how I was "not responsive", nor is your assertion that your request is "crystal clear". Having failed at my one attempt to identify that which you seek, I am reluctant to speculate further and my crystal ball is on the fritz at the moment so you'll just have to tell me just what it is that you want and why my client is the only source of that information. As before, it would be a big help to me in evaluating the merits of your request if you could include the legal authorities upon which you base any claim of right to obtain that which you seek.

As to your assertion that you have not communicated with my client since he informed you of my representation of him, your phone records showing the two successive calls to him and the cc copy to him of your first e-mail letter to me are contradictory. I see no reason to file any complaint at this time and do not anticipate further cause to so do.

While awaiting your kind reply, I remain,

Sincerely Yours,
Dennis J. Plews

On Monday, April 21, 2003 1:39 PM, Burka, Robert A. wrote:

>
>Date: Mon, 21 Apr 2003 12:39:50 -0500
>From: Burka, Robert A.
>To: "'dennis@attorneycpa.com'"
>Subject: RE: Your Recent E-Mail

>
> I have not knowingly communicated with your client since he has
>identified you as his counsel. I did, however, ask you whether in fact you
>represent him in the Federal Election Commission matter since there is no
>indication on any item that Mr. Shelton has filed with the FEC that that is
>in fact the case; if you do not represent Mr. Shelton in the FEC matter and
>no one can identify any attorney who does, then my communicating directly
>with Mr. Shelton is, I believe, proper.

>
> I wonder whether you could confirm that you do represent Mr. Shelton
>in the FEC matter and, if so, whether you could point me to any
>communication with the FEC to that effect?

>
> In the meantime, if you think that I am in violation of some rule, I
>suggest that you file a complaint.

>
> As to the substance of my request, I believe that it was crystal
>clear. Your client has filed a complaint with the FEC, the resolution of
>portions of which may require access to data that Mr. Shelton has. He
>apparently refuses to make them available in order for Ms. Schneider to
>defend herself properly. That simple. And if you have any question as to

>what data, assume that it is all Schneider for Congress campaign-related
>data that he possesses.

>
> You can either make them available or you can continue to refuse to
>do so. If the latter, I will take any step appropriate in the
>circumstances.

>
>-----Original Message-----

>From: Dennis Plevs
>Sent: Monday, April 21, 2003 10:44 AM
>To: Burka, Robert A.
>Subject: RE: Your Recent E-Mail

>
>
>Mr. Burka:

>
> To begin with, stop contacting my client. Your argument that you
>may
>contact him directly because I have not filed an appearance on his behalf
>at the FEC is illustrative of your lack of awareness of ethical conduct.
>For example, your repeated calls and now e-mails to my client are not
>only unwelcome, they have become harassing, particularly due to the
>vulgar tone of which you seem fond.

>
> As you are fully aware of my representation of Mr. Shelton in this
>matter, your actions appear to violate Rule 4.4 of the DC Bar's Ethical
>Rules, to wit:

>
>"Rule 4.4 - Respect for Rights of Third Persons

>
>In representing a client, a lawyer shall not use means that have no
>substantial purpose other than to embarrass, delay, or burden a third
>person, or use methods of obtaining evidence that violate the legal
>rights of such a person
>Comment:
>
>Responsibility to a client requires a lawyer to subordinate the interests
>of others to those of the client, but that responsibility does not imply
>that a lawyer may disregard the rights of third persons. It is
>impractical to catalogue all such rights, but they include legal
>restrictions on methods of obtaining evidence from third persons.
> Rule Four Table of Contents Rule 4.1 Truthfulness in Statements to
>Others Rule 4.2 Comm. Between Lawyer and Opposing Parties Rule 4.3
>Dealing With Unrepresented Person Rule 4.4 Respect for Rights of Third
>Persons"

>
>
> As you are also a member, presumably, of the New York Bar, it no
>doubt
>has an ethical rule similar to the Florida rule, which is itself very
>similar in language and intent to the DC rule set forth above. The
>Florida ethical rule is:

>
>"4 RULES OF PROFESSIONAL CONDUCT
>4-4 TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS
>
>RULE 4-4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL
>
>In representing a client, a lawyer shall not communicate about the
>subject of the representation with a person the lawyer knows to be

>represented by another lawyer in the matter, unless the lawyer has the
>consent of the other lawyer. Notwithstanding the foregoing, an attorney
>may, without such prior consent, communicate with another's client in
>order to meet the requirements of any statute or contract requiring
>notice or service of process directly on an adverse party, in which event
>the communication shall be strictly restricted to that required by
>statute or contract, and a copy shall be provided to the adverse party's
>attorney."

>

>

> Since Ms. Schneider in the past has boldly used others to
>communicate

>with my client in my absence concerning the issues that exist between
>them, you seem to be merely continuing that trend.

>

> Now, as to the substance of your as yet undisclosed need to obtain a

>

>vague something from my client: What is it that you want, specifically,
>and on what authority do you respectfully request it?

>

> As to your assertion that the complaint filed by Mr. Shelton with
>the

>FEC is "baseless", I look forward to reading the statements you've from
>of persons who have direct evidence relevant to the issues. You just
>might find that your client's recollection is not fully reliable.

>

> Your assertion that my initial e-mail to you constitutes a refusal
>to

>provide access to his records is itself "baseless" as you as yet have
>made no request to me for anything, you merely seem to be abusive.

>Moreover, I have made it abundantly clear that the entries Mr. Shelton
>made into his personal computer were of data appearing on paper records
>that presumably are still possessed by your client. If that is not the
>information that you seek, what do you want? If your client no longer
>has the paper records with that data, the FEC should now have that data
>and you can obtain it there. If what you seek is not in the FEC records,
>what is it that you want? I appreciate your need to represent your
>client effectively and therefore anticipate your timely and professional
>response.

>

>Dennis J. Plews

>

>

>

>

>On Thursday, April 10, 2003 1:39 PM, Burka, Robert A. wrote:

>>

>>Date: Thu, 10 Apr 2003 12:39:48 -0500

>>From: Burka, Robert A.

>>To: "dennis@attorneycpa.com"

>>Subject: RE: Your Recent Telephone Call to me.

>>

>> This is not responsive to my enquiry, which relates to having access
>>to data and records necessary for my clients to defend themselves against
>>charges made by your client. As things now stand, Mr. Shelton has made
>>claims that I understand to be baseless, but with respect to some portions
>>we cannot fully demonstrate their lack of merit without access to records
>>that Mr. Shelton is withholding.

>>

>> In short, Mr. Shelton has made claims to the Federal Election

>>Commission and is now withholding data to defeat my client's ability to
>>defend herself.

>>

>> I take your E-mail to be a continued refusal to provide those data
>>and records, and I will act accordingly.

>>

>> One further point. I represent Ms. Schneider and her committee only
>>in the FEC matter. Mr. Shelton tells me that he filed his complaint with
>>the Commission through counsel and that you represent him before the FEC.
>>Could you please tell me if you are the attorney who filed Mr. Shelton's
>FEC

>>complaint and, if not, then who did? Further, could you please confirm
>that

>>you represent Mr. Shelton before the FEC? If so, then could you please
>tell

>>me where on the papers that Mr. Shelton filed with the FEC you are
>>identified? And if you do not represent Mr. Shelton before the FEC, then
>>does anyone and, if so, who?

>>

>>

>>-----Original Message-----

>>From: Dennis Plews

>>Sent: Thursday, April 10, 2003 1:29 PM

>>To: rburka

>>Cc: MichaelJShelton

>>Subject: Your Recent Telephone Call to me.

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>>

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April 10, 2003

>>Mr. Burka:

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>>I am aware of the probable reason for your call to me. As I have been
>>subjected to a similar demand from attorney Susan Chapman, my response to
>>her will, I believe, be responsive to your presumed purpose. In salient
>>part, it is as follows:

>>

>> "Concerning the so-called FEC records, you make interesting
>>assertions

>>concerning ownership and have information concerning Mr. Carroll's
>>position with the Schneider campaign that is inconsistent with what is
>>known to be true. As to the ownership of the data that may still be
>>contained in my client's personal computer, Mr. Carroll provided the data
>>from paper records and presumably he or some other campaign member such
>>as your client or her father should still be possessed thereof. Anything
>>in my client's computer was entered by him and would therefore appear to
>>be his work product. As your claim of ownership is unsupported by any
>>citations of authority, I am unable to agree that the data is anything
>>other than the product of my client's labors. Would you be so kind as to
>>provide me with copies of the legal authorities upon which you base your
>>ownership assertion so that I might review same and reach my own legal
>>opinion on this issue in the light thereof? Alternatively, your client
>>can purchase those records from my client by paying him for the time it
>>took him to compile them, some 24 hours, at his customary billable rate
>>of \$250.00 per hour"

>>

>>If this is not responsive to your intended inquiry, I apologize for the
>>presumption and invite your message by return e-mail. If my presumption
>>is correct, then I look forward to your response and being enlightened
>>thereby concerning the legal authorities that support Ms. Schneider's
>>claim.

>>
>>Sincerely,
>>Dennis J. Plews

05/29/03 11:40 AM